



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शुक्रवार, १७ मई, १९९६/२७ वैशाख, १९१८

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH STATE LEGAL SERVICES AUTHORITY

NOTIFICATION

Shimla-2, the 15th May, 1996

No. 9/LSA/Regulation/96.—The Himachal Pradesh State Legal Services Authority, in exercise of the powers conferred on it under section 29-A of the Legal Services Authorities Act, 1987 (Act No. 39 of 1987), hereby makes the following regulations to give effect to the provisions of the aforesaid Act:—

THE HIMACHAL PRADESH STATE LEGAL SERVICES AUTHORITY REGULATIONS, 1996

CHAPTER-I

PRELIMINARY

1. Short title and commencement.—(1) These regulations may be called the Himachal Pradesh State Legal Services Authority Regulations, 1996.

(2) These shall come into force at once.

2. Definitions.—(1) In these regulations, unless the context otherwise requires,—

(a) “Act” means the Legal Services Authorities Act, 1987 (39 of 1987);

- (b) "Committee" means the High Court Legal Services Committee;
- (c) "High Court" means the High Court of Himachal Pradesh;
- (d) "rules" means the Himachal Pradesh State Legal Services Authority Rules, framed under the Act.

(2) All other words and expressions used in these regulations, but not defined, shall have the same meanings as are assigned to them in the Act or the rules framed, thereunder.

CHAPTER-II

HIGH COURT LEGAL SERVICES COMMITTEE

3. *Number, experience and qualifications of members of the High Court Legal Services Committee.*—(1) The High Court Legal Services Committee shall, including Chairman have not more than seven members.

(2) The following shall be *ex-officio* members of the High Court Legal Services Committee:—

- (i) a sitting Judge of the High Court, (to be nominated by the Chief Justice of the High Court) .. *Chairman*
- (ii) the Advocate General, Himachal Pradesh .. *Member*
- (iii) the President, Himachal Pradesh High Court Bar Association .. *Member.*

(3) The Chief Justice of the High Court may nominate other members (not exceeding four) from amongst those possessing the experience and qualification prescribed in sub-regulation (3) of this regulation.

(4) A person shall not be qualified for nomination as a member of the High Court Legal Services Committee unless he is —

- (a) an eminent social worker who is engaged in the upliftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, Women, Children, rural and urban labour; or
- (b) an eminent person in the field of law or public administration; or
- (c) a person of repute who is specially interested in the implementation of the Legal Service Schemes.

4. *Term of office and other conditions of appointment of the High Court Legal Services Committee.*—(1) The term of office of the Members of the High Court Legal Services Committee nominated under sub-regulation (3) of regulation 3 by the State Authority shall be two years and they shall be eligible for re-nomination.

(2) A member of the High Court Legal Services committee under sub-regulation (3) of regulation 3 may be removed by the Chief Justice of the High Court, if—

- (a) he fails, without sufficient cause, to attend three consecutive meetings of the High Court Legal Services Committee;
- (b) has been adjudged as insolvent; or
- (c) has been convicted of an offence, which in the opinion of the State Authority involves moral turpitude; or
- (d) has become physically or mentally incapable of acting as a member; or
- (e) has so abused his position as to render his continuance in the High Court Legal Services Committee prejudicial to the public interest:

Provided that, no member shall be removed from the High Court Legal Services Committee, without affording him reasonable opportunity of being heard.

(3) A member may, by writing under his hand addressed to the Chairman resign from the High Court Legal Services Committee and such resignation shall take effect from the date on which it is accepted by the State Authority or on the expiry of 30 days from the date of tendering resignation, whichever is earlier.

(4) If any member nominated under sub-regulation (3) of regulation 3 ceases to be member of the High Court Legal Services Committee for any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be a member for the remaining term of the member in whose place he is nominated.

(5) Subject to the provisions of sub-regulation (6) all members nominated under sub-regulation (3) of regulation 3 shall be entitled to payment of travelling allowance and daily allowance in respect of journeys performed in connection with the work of the High Court Legal Services Committee and shall be paid by the High Court Legal Services Committee in accordance with the Himachal Pradesh Government instructions contained in Finance Regulation Department Office Memorandum No. Fin-(c)-B(7)-2/88, dated 24-5-1995, as amended from time to time.

(6) If a member is a Government employee, he shall be entitled to draw the travelling allowance and daily allowance at the rates to which he is entitled to under the service rules applicable to him and shall draw from the department, in which he is employed and not from the High Court Legal Services Committee.

(7) The Secretary of the High Court Legal Services Committee shall be the part time officer of the High Court Legal Services Committee and he shall be paid honorarium for the performance of the functions as such, at such rates as may be fixed from time to time, by the State Authority in consultation with the State Government.

5. *Functions of High Court Legal Services Committee*.—(1) It shall be the duty of the High Court Legal Services Committee to give effect to the policy and directions of the State Authority.

(2) Without prejudice to the generality of the functions referred to in sub-regulation (1), the High Court Legal Services Committee shall, for the High Court, perform all or any of the following functions, namely:—

- (a) provide legal services to persons who satisfy the criteria laid down under the Act and the rules framed thereunder;
- (b) conduct Lok Adalats for High Court cases; and
- (c) encourage the settlement of disputes by way of negotiations, arbitration and conciliation.

6. *Functions of the Secretary*.—(1) The Secretary shall be custodian of all assets, accounts, records and funds placed at the disposal of the Committee and shall work under the supervision and direction of the Chairman of the Committee.

(2) The Secretary shall maintain or cause to be maintained true and proper accounts of the receipts and disbursement of the funds of the Committee.

(3) The Secretary shall convene meetings of the Committee with the previous approval of the Chairman and shall also attend meetings and shall be responsible for maintaining a record of the minutes of the proceedings of the meetings.

7. *Meetings of the Committee.*—(1) The Committee shall ordinarily meet once a month on such date, and at such place as the Secretary may, in consultation with the Chairman decide.

(2) The Chairman, and in the absence of the Chairman a person chosen by the members present from amongst themselves shall preside at the meeting of the Committee.

(3) The procedure at any meeting of the Committee shall be such as the Committee may determine.

(4) The minutes of the proceedings of each meeting shall be truly and faithfully maintained by the Secretary and such minutes shall be open to inspection at all reasonable times by the members of the Committee. A copy of the minutes shall, as soon as may be after the meeting, be forwarded to the State Authority.

(5) The quorum for the meeting shall be four including the Chairman or the member presiding over the meeting.

(6) All questions at the meeting of the Committee shall be decided by a majority of the Members present and voting and in cases of a tie the person presiding shall have a second or casting vote.

8. *Funds, Accounts and Audit of the Committee.*—(1) The Funds of the Committee shall consist of such amounts as may be allocated and granted to it by the State Authority as also such amounts as may be received by the Committee from time to time either by way of donations or by way of costs, charges and expenses recovered from the legal aided persons or the opposite party or otherwise.

(2) The funds of the Committee shall be maintained in a Scheduled Bank.

(3) For the purpose of meeting the incidental minor charges such as Court fee, stamps and expenditure necessary for obtaining copies of documents etc., a permanent advance of rupees two thousand shall be placed at the disposal of the Secretary of the Committee.

(4) All expenditure on legal aid and advice, provision of other legal services as also expenditure necessary for carrying out the various functions of the Committee, shall be met out of the funds of the Committee. Secretary shall operate the bank accounts of the Committee in accordance with the directions of the Chairman.

(5) The Committee shall cause to be kept and maintain true and correct accounts of all receipts and disbursements and furnish quarterly returns to the State Authority. The accounts of the Committee shall be audited by the State Government Local Audit Department at least once a year and any expenditure incurred in connection with such audit shall be paid by the Committee.

CHAPTER-III

DISTRICT LEGAL SERVICES AUTHORITIES AND TALUKA LEGAL SERVICES COMMITTEES

9. *Secretary District Legal Services Authority.*—(1) The Secretary of the District Legal Services Authority appointed, under sub-section (3) of section 9 of the Act shall act, exercise and perform the duties of the Secretary of the District Legal Services Authority in addition to the duties to be discharged by him as a Judicial Officer and for the discharge of his additional duties he may be paid an honorarium as may be fixed from time to time by the State Authority in consultation with the State Government.

(2) The Secretary shall be the principal officer of the District Authority and shall be custodian of all assets, accounts, records and funds placed at the disposal of the District Authority.

(3) The Secretary shall maintain or cause to be maintained true and proper accounts of the receipts and disbursement of the funds of the District Authority.

(4) The Secretary shall convene meetings of the District Authority with the previous approval of the Chairman and shall also attend meeting, and shall be responsible for maintaining a record of the minutes of the proceeding of the meetings.

10. Meetings of the District Authority.—(1) The District Authority shall ordinarily meet once a month on such date, at such place, as the Secretary may, in consultation with the Chairman, decide.

(2) The Chairman, and in the absence of the Chairman, a person chosen by the members present from amongst themselves shall preside at the meeting of the District Authority.

(3) The procedure at any meeting of the District Authority shall be such as the District Authority may determine.

(4) The minutes of the proceedings of each meeting shall be truly and faithfully maintained by the Secretary and such minutes shall be open to inspection at all reasonable times by the members of the District Authority. A copy of the minutes shall, as soon as may be, after the meeting, be forwarded to the Chairman of the District Authority.

(5) The quorum for the meeting shall be three including the Chairman or the member presiding over the meeting.

(6) All questions at the meeting of the District Authority shall be decided by a majority of the members present and voting and in case of a tie, the person presiding shall have a second or casting vote.

11. Funds of the District Authority.—(1) The funds of the District Authority established under section 17 of the Act, shall be maintained in a Scheduled Bank.

(2) For the purpose of meeting the incidental minor charges such as court fee, stamps and expenditure necessary for obtaining copies of documents etc., a permanent advance of rupees two thousand shall be placed at the disposal of the Secretary of the District Authority.

(3) All expenditure on legal aid and advice, provisions of other legal services as also expenditure necessary for carrying out the various functions of the District Authority, shall be met out of the funds of the District Authority and in accordance with such rules as may be made by the District Authority with the prior approval of the State Authority. The Secretary shall operate the bank accounts of the District Authority.

(5) The District Authority shall cause to be kept and maintained true and correct accounts of all receipts and disbursements and furnish quarterly return to the State Authority. Such accounts shall be audited in accordance with the provisions of section 18 of the Act.

12. Secretary of the Taluka Legal Services Committee.—(1) The Office Superintendent of the office of the person performing the functions of the Chairman of the Taluka Legal Services Committee or in case if there is no such Superintendent, some other officer/official working under the Chairman and appointed by him, shall act, exercise and perform the duties of the Secretary of the Taluka Legal Services Committee. He shall be a part time officer and for the

discharge of the additional duties shall be paid an honorarium as may be fixed from time to time by the State Authority, in consultation with the State Government.

(2) The Secretary shall be the custodian of all assets, accounts, records and funds placed at the disposal of the Taluka Committee.

(3) The Secretary shall maintain or cause to be maintained true and proper accounts of the receipts and disbursement of the funds of the Taluka Committee.

(4) The Secretary shall, with the previous approval of the Chairman, convene meetings of the Taluka Committee and shall also attend meetings, and shall be responsible for maintaining a record of the minutes of the proceeding of the meetings.

13. Meetings of the Taluka Committee.—(1) The Taluka Committee shall ordinarily meet once a month on such date, at such place, as the Chairman may decide.

(2) The Chairman, and in the absence of the Chairman, a person chosen by the members present from amongst themselves shall preside at the meeting of the Taluka Committee.

(3) The procedure at any meeting of the Taluka Legal Services Committee shall be such as the Taluka Committee may determine.

(4) The minutes of the proceedings of each meeting shall be truly and faithfully maintained by the Secretary and such minutes shall be open to inspection at all reasonable times by the members of the Taluka Committee. A copy of the minutes shall, as soon as may be, after the meeting, be forwarded to the District Authority as well as State Authority.

(5) The quorum for the meeting shall be three including the Chairman or the member presiding over the meeting.

(6) All questions at the meeting of the Taluka Committee shall be decided by a majority of the members present and voting and in case of a tie, the person presiding shall have a second or casting vote.

14. Funds, Accounts and Audit of the Taluka Legal Services Committee.—(1) The Funds of the Taluka Committee shall consist of such amount as may be allocated and granted to it by the State Authority as also such amounts as may be received by the Committee from time to time either by way of donations or by way of costs, charges and expenses recovered from the legal aided persons or the opposite party or otherwise.

(2) The Funds of the Taluka Committee shall be maintained in a Scheduled Bank.

(3) For the purpose of meeting the incidental minor charges such as Court fee, stamps and expenditure necessary for obtaining copies of documents etc., a permanent advance of rupees two thousand shall be placed at the disposal of the Secretary of the Taluka Committee.

(4) All expenditure on legal aid and advice, provisions of other legal services as also expenditure necessary for carrying out the various functions of the Taluka Committee shall be met out of the fund of the Taluka Committee. The Secretary shall operate the bank accounts of the Committee in accordance with the directions of the Chairman.

(5) The Taluka Committee shall cause to be kept and maintain true and correct accounts of all receipts and disbursement and furnish quarterly returns to the State Authority. The

accounts of the Taluka Committee shall be audited by the State Government Local Audit Department at least once a year and any expenditure incurred in connection with such audit shall be paid by the Taluka Committee.

CHAPTER-IV

LEGAL AID

15. Criteria for giving legal services.—Every person who has to file or defend a case shall be entitled to legal services if that person is:—

- (a) a member of a Scheduled Caste or Scheduled Tribes;
- (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a mentally ill or otherwise disabled person;
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- (h) in receipt of annual income less than rupees fifteen thousand or other higher amount as may be fixed under rule 17 of the Himachal Pradesh Legal Services Authority Rules, 1995:

Provided that the Legal Services Committee or authority may grant legal aid—

- (i) in a case of great public importance; or
- (ii) in a test case, the decision of which is likely to affect cases of numerous other Persons belonging to the weaker sections of the community; or
- (iii) in any case, which for reasons to be recorded in writing, is considered by the Chairman to be deserving of legal aid even where the means test is not satisfied.

16. Modes of legal aid.—Legal aid may be given in all or any one or more of the following modes, namely :—

- (a) payment of court-fees, process fees and all other charges payable or incurred in connection with any legal proceedings;
- (b) representation by a legal practitioner in legal proceedings;
- (c) obtaining and supply of certified copies of orders and other documents in legal proceedings;
- (d) preparation of appeal, paper book including printing and translation of documents, in legal proceedings.

17. Legal aid not to be given in certain cases.—Legal aid shall not be given in the following cases, namely:—

- (1) Proceedings wholly or partly in respect of:—
 - (a) defamations; or

- (b) malicious prosecution;
- (c) a person charged with contempt of court proceedings;
- (2) proceedings relating to any election;
- (3) proceedings incidentally to any proceedings referred to in items (1) and (2);
- (4) proceedings in respect of offences where the fine imposed is not more than Rs. 50/-;
- (5) proceedings in respect of economic offences and offences against social laws, such as the Protection of Civil Rights Act, 1955, and the Immoral Traffic (Prevention) Act, 1956;

Provided that the Chairman may in appropriate cases grant legal aid even in such proceedings for reasons to be recorded in writing.

- (6) Where a person seeking legal aid—
 - (a) is concerned with the proceeding only in official capacity; or
 - (b) if a formal party to the proceedings, not materially concerned in the outcome of the proceedings and his interests are not likely to be prejudiced on account of the absence of proper representation.

18. *Application for legal aid or advice.*—(1) Any person desiring legal aid or advice may make an application addressed to the Secretary of the Authority/Committee. But if the applicant is illiterate or not in a position to fill in the particulars required in the application, the Secretary or any other officer of the Committee or any legal practitioner whose name appears on the panel of Legal aid lawyer of the Authority/Committee, as the case may be, shall gather the necessary particulars from the applicant and prepare the application on his behalf and after reading it out and explaining it to him, obtain his signature or thumb mark on it.

(2) The Authority/Committee shall maintain a register of applications wherein all applications for legal aid and advice shall be entered and registered and the action taken on such applications shall be noted against the entry relating to each such application.

19. *Disposal of applications.*—(1) On receipt of an application for legal aid or advice, in the case of High Court Committee or District Authority, the Secretary and in the case of Taluka Committee, the Chairman of the Taluka Committee shall scrutinise the application for the purpose of deciding whether the applicant is deserving of legal aid in accordance with the provisions of these Regulations and for the purpose of arriving at such decision, he may require the applicant to submit further information as may be necessary and also discuss the matter personally with the applicant and in doing so he shall have regard to the fact that the applicant belongs to a weaker section of the community and is required to be assisted even in the matter of obtaining legal aid. The application shall be processed as early as possible and preferably within one week.

(2) The Legal Services Authority/Committee, to which application is made shall consider the application and decide desirability of granting application and its decision to give or refuse legal aid shall be final.

(3) Where it is decided not to give legal aid to an applicant, the reasons for not doing so shall be entered in the Register of applications maintained by the Authority/Committee and information in writing to that effect shall be communicated to the applicant.

(4) No application for legal aid or advice shall be allowed, if the Authority/Committee is satisfied that:—

- (a) the applicant has knowingly made false statement or furnished false information as regards his means or place of residence; or

- (b) in a proceeding, other than the one relating to criminal prosecution, there is no *prima facie* case to institute, or as the case may be, to defend the proceeding; or
- (c) the application is frivolous or fictitious; or
- (d) the applicant is not entitled to the same under regulation 17 or any other provision of these regulations; or
- (e) having regard to all the circumstances of the case, it is otherwise not reasonable to grant it.

20. *Certificate of Eligibility*.—(1) Where an application for legal aid or advice is allowed, the Secretary of the Authority/Committee shall issue a Certificate of Eligibility to the applicant entitling him to legal aid or advice in respect of the proceeding concerned.

(2) The Certificate of Eligibility shall stand cancelled if the legal aid is withdrawn and the lawyer to whom the case of the applicant is assigned as also the court before which the case is pending shall be informed accordingly in writing.

21. *Honorarium payable to Legal Practitioner on the Panel*.—(1) Subject to the approval of the State Authority, the Legal Services Authority/Legal Service Committee shall prepare a panel of legal practitioners who are prepared to represent or prosecute the cases on behalf of the legal aided persons under these regulations. The legal practitioners on the panel shall be paid honorarium as set out in the Schedule:

Provided that where the matter is disposed of in less than five effective hearings, the fee payable shall be 1/3 of the fee prescribed in the Schedule.

No legal practitioner to whom any case is assigned either for legal advice or for legal aid shall receive any fee or remuneration whether in cash or in kind or any other advantage, monetary or otherwise, from the aided person or from any other person on his behalf.

(3) The legal practitioner on the Panel, who has completed his assignment, shall submit a statement showing the honorarium due to him in connection with the legal proceeding conducted by him on behalf of the legally aided person to the Secretary of the Authority/Committee who shall, with the approval of the Chairman and after due scrutiny and counter-signature, place the same before the Authority/Committee for sanction and on such sanction being given by the Authority/Committee the amount shall be paid by the Secretary to the legal practitioner. It will, however, be open to the legal practitioner to waive the honorarium in whole or part.

22. *Duty of aided person*.—(1) Every aided person or his representative shall attend the office of the Authority/Committee as and when required by the Authority/Committee or by the legal practitioner rendering legal aid to him and shall furnish full and true information and shall make full disclosure to the legal practitioner concerned and shall attend the Court as and when required, at his own expense.

23. *Cancellation of Certificate of Eligibility*.— The Authority/Committee may either on its own motion or otherwise cancel the Certificate of Eligibility granted under regulation 20 in the following circumstances, namely :—

- (a) in the event of being found that the aided person was possessed of sufficient means or the Certificate of Eligibility was obtained by misrepresentation or fraud;
- (b) in the event of any material change in the circumstances of the aided person;
- (c) in the event of any misconduct, misdemeanor or negligence on the part of the aided person in the course of receiving legal aid;

- (d) in the event of the aided person not co-operating with the Committee or with the Legal Practitioner assigned by the Committee/Authority;
- (e) in the event of the aided person engaging a legal practitioner other than the one assigned by the Committee/Authority;
- (f) in the event of death of the aided person, except in the case of civil proceedings where the right of liability survives;
- (g) a report has been received from the advocate assigned to the legally aided person that the legally aided is not co-operating with the advocate assigned to him or is guilty of misconduct towards the advocate and such report has been verified by the Chairman of the Legal Services Committee/Authority;

Provided that, no such Certificate of Eligibility shall be cancelled without giving due notice thereof to the aided person or to his legal representatives in the event of his death, to show cause as to why the Certificate should not be cancelled.

(2) Where the Certificate of Eligibility is cancelled on the grounds set out in clause (a) above, the Authority/Committee shall discontinue legal aid allowed and shall be entitled to recover from the aided person the amount of legal aid granted to him.

24. *Proceedings by the Chairman in most urgent cases.*—Notwithstanding anything to the contrary contained in these regulations, in case the Chairman of any Committee/Authority is of the opinion that such a situation has arisen wherein immediate action is required to be taken or there is no possibility of immediate convening the meeting of the Committee/Authority, then he may, in anticipation of the approval of the Committee/Authority concerned, take such action as he may deem fit, and thereafter he shall, as soon as possible send a report of his action so taken to the Committee/Authority concerned.

SCHEDULE

Advocate engaged out of the panel as prepared for prosecuting/defending/protecting legal interest of a person granted free legal aid shall be entitled to the fee other than the High Court as under:—

1. Rs.850/- per case in any court at Sub Divisional level, such as the Court of Senior Sub-Judge, Chief Judicial Magistrate, Sub-Judge Judicial Magistrate, Court of Assistant Commissioner, 1st Grade, Sub-Divisional Collector, Sub-Divisional Magistrate, Tehsildar;
2. Rs. 1250/- per case at District level, such as the Courts of District Judge, Sessions Judge, Additional District Judge, Additional Sessions Judge, District Collector, Divisional Commissioner, District Consumer Forum established under the Consumer Protection Act, 1986 and Labour and Industrial Tribunal set up under the Industrial Disputes Act, 1947;
3. Rs. 3000/- maximum payable after disposal of the case at the High Court level including the State Consumer Forum established under the Consumer Protection Act, 1986 and the Court of Financial Commissioner Revenue (Appeals).

II. Fee payable to a panel lawyer under these regulations shall be made in two instalments as under:—

- (i) 1/2 of the fee, on engagement of the lawyer, payable, after first hearing of the case;
- (ii) remaining fee, payable after the final decision of the case.

By order,
T. N. VAIDYA,
Member-Secretary.